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Intellectual Property Causes
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Attorney Docket No. P24369

In re application of: A. RINKE et al.

Application No. : 10/726,642

Filed : December 4, 2003

For : MULTIFUNCTIONAL CONVEYING DRUM

Mail Stop Amendment

Group Art Unit: 3651

Examiner: R. Sharma

Mail Stop Amendment

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Transmitted herewith is an **Election with Traverse** in the above-captioned application.

☐ Small Entity Status of this application under 37 C.F.R. 1.9 and 1.27 has been established by a previously filed statement.

☐ A verified statement to establish small entity status under 37 C.F.R. 1.9 and 1.27 is enclosed.

☐ A Request for Extension of Time.

☒ No additional fee is required.

The fee has been calculated as shown below:

Claims After Amendment	No. Claims Previously Paid For	Present Extra	Small Entity		Other Than A Small Entity	
			Rate	Fee	Rate	Fee
Total Claims: 25	*25	0	x 9=	\$	x 18=	\$0.00
Indep. Claims: 2	**3	0	x 44=	\$	x 88=	\$0.00
Multiple Dependent Claims Presented			+150=	\$	+300=	\$0.00
Extension Fees for ____ Month(s)				\$		\$0.00
Total:				\$	Total:	\$0.00

* If less than 20, write 20

** If less than 3, write 3

☐ Please charge my Deposit Account No. 19-0089 in the amount of \$ ____.

☒ A check in the amount of \$ ____ to cover the *filing/extension* fee is included.

☒ The U.S. Patent and Trademark Office is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0089.

☒ Any additional filing fees required under 37 C.F.R. 1.16.

☒ Any patent application processing fees under 37 C.F.R. 1.17, including any required extension of time fees in any concurrent or future reply requiring a petition for extension of time for its timely submission (37 C.F.R. 1.136(a)(3)).

Neil F. Greenblum
Reg. No. 28,394

Robert W. Mueller
Reg. No. 35,043

ELECTION WITH TRAVERSE

Sir:

In the Official Action of February 4, 2002, the Examiner indicated that all claims (1 - 25) were subject to restriction under 35 U.S.C. § 121. The Examiner restricted the claimed invention into Group I, including claims 1 – 17, drawn to a conveyor drum apparatus, classified in class 198, subclass 458; and Group II, including claims 18 – 25, drawn to a process of changing longitudinal axial spacing between articles, classified in class 198, subclass 617.

The Examiner asserted that the inventions were related as process and apparatus for its practice, and that the inventions are distinct from each other under M.P.E.P. § 806.05(e) because the "process of Group II can be achieved by utilizing palletized conveyor systems."

Applicants respectfully submit that the Examiner has omitted one of the two criteria for a proper restriction requirement now established by the U.S. Patent and Trademark Office policy. That is, as set forth in M.P.E.P. § 803, "an appropriate explanation" must be advanced by the Examiner as to the existence of a "serious burden" if the restriction requirement were not required.

While the Examiner has alleged a possible distinction between the two identified groups of invention, the Examiner has not shown that a concurrent examination of these groups would present a "serious burden" on the Examiner. In fact, the Examiner has acknowledged that the individual groups would be classified in the same class 198, and there has been no appropriate statement that the search areas required to examine the invention of group I would not overlap into the search areas for examining the invention of group II, and vice versa. Moreover, Applicants respectfully submit that the search for the combination of features recited in the claims of the above-noted groups, if not totally co-extensive, would appear to have a very substantial degree of overlap.

Because the search for each group of invention is substantially the same, Applicants submit that no undue or serious burden would be presented in concurrently examining Groups I and II. Thus, for the above-noted reasons, and consistent with the office policy set forth above in M.P.E.P. § 803, Applicants respectfully request that the

Examiner reconsider and withdraw the restriction requirement in this application.

For all of the above reasons, the Examiner's restriction is believed to be improper. Nevertheless, Applicants have elected, with traverse, the invention defined by Group I, in the event that the Examiner chooses not to reconsider and withdraw the restriction requirement.

Should the Examiner have any questions or comments, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,
Andreas RINKE et al.



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April 28, 2005
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